Grane Health Care, Inc., and Lexington, III, Inc. d/b/a Nittany Manor Care Associates, a Partnership d/b/a Altoona Hospital Center for Nursing Care and Amber Terrace *and* Service Employees International Union, Local 585, AFL–CIO, CLC. Case 6–CA–31803

March 28, 2002

DECISION AND ORDER

BY CHAIRMAN HURTGEN AND MEMBERS COWEN AND BARTLETT

On January 14, 2002, Administrative Law Judge Earl E. Shamwell Jr. issued the attached decision. The General Counsel filed limited exceptions.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the limited exceptions and has decided to affirm the judge's rulings, findings, and conclusions[1] and to adopt the recommended Order as modified.[2]

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge as modified below and orders that the Respondent, Grane Health Care, Inc., and Lexington, III, Inc., d/b/a Nittany Manor Care Associates, a Partnership d/b/a Altoona Hospital Center for Nursing Care and Amber Terrace, Altoona, Pennsylvania, its officers, agents, successors and assigns, shall take the action set forth in the Order as modified.

1. Substitute the following for paragraph 2(b).

"(b) Within 14 days after service by the Region, post at its facility in Altoona, Pennsylvania, copies of the attached notice marked "Appendix."[18] Copies of the notice, on forms provided by the Regional Director for Region 6, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since November 22, 2000."

2. Substitute the attached notice for that of the administrative law judge.

Dated, Washington, D.C. March 28, 2002

Peter J. Hurtgen,	Chairman
William B. Cowen	Member
Michael J. Bartlett,	Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
National Labor Relations Board
an Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union

Choose representatives to bargain with us on your behalf

Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities.

WE WILL NOT refuse to bargain collectively in good faith with Service Employees International Union, Local 585, AFL–CIO, CLC by unilaterally granting wage increases, without the consent of the Union, during the term of any collective-bargaining agreement between the Union and the Altoona Hospital Center, to the employees in the following appropriate unit:

> All full-time and regular part-time service and maintenance employees and licensed practical nurses, including activity assistants, certified nursing assistants, nursing assistants, cooks, dietary aides, environmental service employees, maintenance employees, housekeeping

[1] In his exceptions, the General Counsel requests only that the Board correct the Respondent's name in the caption and in the notice to employees, conform the notice to the judge's recommended Order, and correct an inadvertent error in the notice. The Respondent has not filed exceptions to the judge's decision or an answering brief to the General Counsel's exceptions. In the absence of any exceptions to the judge's findings and conclusions, we adopt the judge's decision pro forma.

[2] We shall modify the judge's recommended Order in accordance with our decisions in *Indian Hills Care Center*, 321 NLRB 144 (1996), and *Excel Container, Inc.*, 325 NLRB 17 (1997). In addition, we shall substitute a new notice to correct inadvertent errors and to conform it to the judge's recommended Order and our recent decision in *Ishikawa Gasket America, Inc.*, 337 NLRB No. 29 (2001).

aides, laundry aides, unit clerks, and unit secretaries, employed by us at our Altoona Hospital Center for Nursing Care and Amber Terrace; excluding all business office clerical employees, confidential employees, receptionists and guards, professional employees, and supervisors as defined in the Act.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL, upon request by the Union, rescind the unilateral increases in wage rates to our licensed practical nurses and certified nursing assistants at our Altoona, Pennsylvania facility.

GRANE HEALTH CARE, INC., AND LEXINGTON, III, INC., D/B/A NITTANY MANOR CARE ASSOCIATES, A PARTNERSHIP D/B/A ALTOONA HOSPITAL CENTER FOR NURSING CARE AND AMBER TERRACE

Stephanie Brown, Esq., for the General Counsel.
George Basara, Esq. (Buchanan Ingersoll, P. C.), of Pittsburgh, Pennsylvania, for the Respondent.
John Haer, Staff Director, Service Employees International Union, Local 585, AFL–CIO, CLC, for the Charging Party.

DECISION

STATEMENT OF THE CASE

EARL E. SHAMWELL JR., Administrative Law Judge. This case was heard by me on June 19, 2001, in Ebensburg, Pennsylvania, pursuant to an original charge filed by Service Employees International Union, Local 585, AFL–CIO, CLC (the Union) on December 2, 2000, against Grane Health Care, Inc., and Lexington, III, Inc. d/b/a Nittany Manor Care Associates, a Partnership d/b/a Altoona Hospital Center for Nursing Care and Amber Terrace (the Respondent), and an amended charge field by the Union against the Respondent on February 23, 2001. Based on these charges, the Regional Director for Region Six of the National Labor Relations Board (the Board) issued a complaint against the Respondent on March 30, 2001. The complaint alleges that the Respondent violated Section 8(a)(5) and (1) of the National Labor Relations Act (the Act) within the meaning of Section 8(d) of the Act by unilaterally modifying the collective-bargaining agreement between the Union and the Respondent without the consent of the Union by granting wage increases to certain of the Respondent's employees.

The Respondent filed an answer denying the essential allegations in the complaint,[1] and asserting certain defenses.

Based on the entire record, including the testimony of the witnesses and my observations of their demeanor and the briefs submitted by the General Counsel and the Respondent,[2] I make the following findings of fact, conclusions of law, and order.

FINDINGS OF FACT

I. JURISDICTIONAL MATTERS

The Respondent, a partnership and Pennsylvania joint venture, provides nursing care at its facility in Altoona, Pennsylvania. During the 12-month period ending November 30, 2000, the Respondent, in conducting its business operations, derived gross revenues in excess of $100,000. During the 12-month period ending November 30, 2000, the Respondent, in conducting its business operations, purchased and received at its Altoona, Pennsylvania facility goods valued in excess of $50,000 directly from points outside the commonwealth of Pennsylvania. The Respondent admits, and I find, that it is engaged in commerce within the meaning of Section 2(6) and (7) of the Act. The Respondent admits, and I find, that it has been a health care institution within the meaning of Section 2(14) of the Act.

The Respondent also admits, and I find, that the Union is a labor organization within the meaning of Section 2(5) of the Act.

The Respondent admits, and I find and conclude, that the following employees of the Respondent constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act.

> All full-time and regular part-time service and maintenance employees and licensed practical nurses, including activity assistants, certified nursing assistants, nursing assistants, cooks, dietary aides, environmental service employees, maintenance employees, housekeeping aides, laundry aides, unit clerks, and unit secretaries, employed by the [Respondent] at its Altoona Hospital Center for Nursing Care and Amber Terrace; excluding all business office clerical employees, confidential employees, receptionists and guards, professional employees, and supervisors as defined in the Act.[3]

A. Background

On or about March 28, 1999, the Respondent and the Union negotiated and entered into a collective-bargaining agreement with respect to terms and conditions of employment for unit employees; the agreement was to remain in effect until March 27, 2002, and thereafter from year to year unless either party gave written notice to the other at least 90 days prior to expiration of its desire to modify or terminate the agreement.[4] This agreement was the initial bargaining agreement for employees at the Respondent's Altoona facility.

The relevant provisions of the agreement are as follows:

> 1. Article 6. [This section provides for a four-step procedure to resolve disputes concerning the interpretation or application of any provision of the agreement.]

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[1] The General Counsel moved to redact par. 14 of the complaint at the hearing. I granted the motion.

[2] The Charging Party did not file a brief. The Respondent filed a Motion to Strike Brief On Behalf of Counsel for the General Counsel on grounds that the General Counsel's brief was not timely filed with the Division of Judges. The General Counsel filed her response in opposition. I have considered the motion and response and would conclude that the General Counsel's brief was timely filed under Sec. 102.111(b) of the Board's Rules and Regulations and that the court imposed due date of July 25, 2001, for the filing of briefs was met by the General Counsel. The motion is denied.

[3] These employees hereinafter will be described collectively as the unit.

[4] The entire collective-bargaining agreement between the parties is contained in Jt. Exh. 1(A).

2. Article VII.[5] [This section deals with certain listed rights and prerogatives reserved to the Respondent's management regarding the operation of the business.]

3. Article XXI,[6] Wages and Minimums. Section 21.1 states that all [current] Union employees shall receive the hourly wage increases effective on the dates indicated as follows (in pertinent part):

CNAs [certified nursing assistants]

March 28, 1999	$.75/hour across-the-board
March 28, 2000	$.35/hour across-the-board
March 28, 2001	$.30/hour across-the-board

All others

March 28, 1999	$.35/hour across-the-board
March 28, 2000	$.35/hour across-the-board
March 28, 2001	$.30/hour across-the-board

Start rates and after probation rates for *new* [emphasis supplied] employees shall be:

Effective 3/28/99

	Start Minimum	After Probation/ Minimum
LPN	$9.35	$9.60
CNA	$7.00	$7.25

Effective 3/28/00

	Start Minimum	After Probation/ Minimum
LPN	$9.70	$9.95
CAN	$7.35	$7.60

Effective 3/28/01

	Start Minimum	After Probation/ Minimum
LPN	$10.00	$10.25
CAN	$7.65	$7.90

During the course of their negotiations for this initial agreement, neither the Respondent nor the Union discussed in any way the meaning of the term "minimum" as used in article XXI.

Although article XXI provided for a 75-cent-per-hour raise for most of the certified nursing assistants (CNAs) and a 35-cent-per-hour raise for most of the other bargaining unit employees, including licensed practical nurses, some employees in the unit received a larger raise per hour than the raises delineated in article XXI to bring their wage rates up to the minimum amount specified in that article. Furthermore, by agreement of the parties, certain workers were given wage increases in an amount lower than the amount specified in article XXI because their current wage rates were already higher than the minimums set forth in this article.[7]

Sometime in late July 2000, the Respondent participated in a regional wage survey of its position classifications, including CNAs and LPNs. The survey indicated that the wages Respondent paid CNAs and LPNs were below market rates for these classifications.[8] Accordingly, the Respondent's governing board approved an increase of 55-cents-per-hour for the LPNs and 25 cents for the CNAs.

On August 22, 2000, the Respondent forwarded a memorandum to the Union, which included a proposal to adjust the wages of all LPNs by 55-cents-per-hour and CNAs by 25 cents per hour, effective September 10, 2000.[9] The Respondent also at this time requested the union's response to the proposal.

Upon receipt of the proposal, the Union, sometime in September 2000, convened a meeting of the unit to discuss and vote on the proposal. The proposal was rejected by the membership and the Union conveyed its position to the Respondent sometime in September 2000.

On November 22, 2000, the Respondent implemented the previously proposed wage increases, that is, 55-cents-per-hour for the LPNs and 25 cents for the CNAs, retroactive to November 5, 2000. Notices of the wage increases were given to all LPNs and CNAs by letters in their pay envelopes.

The Respondent's management, among other things, stated in the letter that the adjustment was necessary to enable it to recruit and retain (LPN and CNA) staff at the facility. The Respondent also acknowledged in this letter that pursuant to the collective-bargaining agreement, it was required to submit "these types of adjustments to the Union for approval." However, noting the union's rejection of the proposal, the Respondent stated that it, nonetheless, was necessary to implement the increase to recruit and retain LPN and CNA staff.[10]

On or about December 5, 2000, the Union filed a class action grievance alleging, on behalf of all unit employees, violations of various provisions of the agreement. On or about December 6, 2000, the Respondent rejected the grievance on grounds of untimeliness.[11]

[5] The agreement employs an Arabic numbering system from art. 1 through 6 and a Roman system from art. VII through XXVIII.

[6] Art. XXI also includes dates and amounts of wage increases classifications of unit employees other than LPNs and CNAs; however, these other classifications are not relevant to the controversy at bar.

[7] See Jt. Exh. 1(B), an April 12, 1999 letter to the Union from the Respondent's human resources director reflecting the parties' agreement as to the five-named and red-circled employees and their respective wage rates for years 1 through 3 of the agreement.

[8] The wage survey indicated that the Respondent's dietary, housekeeping, and laundry work wages were competitive.

[9] See Jt. Exh. 1(C). The August 22 memorandum was addressed to John Haer from Michael D. Grubisha, Director of Human Resources. Haer testified at the hearing; Grubisha did not testify. The attached proposal does not speak directly to the Respondent's reason for the proposed increase, but does mention "a market adjustment for wages." Notably, the proposal does not assert any specific or general contractual right of the Respondent to increase the wages of the CNAs and LPNs.

[10] The wage increase letter is contained in Jt. Exh. 1(D). Again, there was no reference in this letter to the Respondent's contractual right to make wage adjustments with or without the consent of the Union.

[11] See Jt. Exh. 1(E). The Respondent administrator, Mark Irwin, rejected the grievance, indicating that it should have been filed under the agreement within 5 days of the grievance event or no later than November 30, 2000. He stated that since the grievance was dated December 5, it was untimely and the Respondent's acceptance of the grievance would pose a violation of the agreement.

B. Contentions of the Parties

With the material facts stipulated, the Respondent principally contends that the parties' collective-bargaining agreement permitted it to grant its licensed practical nurses and certified nursing assistants the wage increase in question. The Respondent submits that basic principles of contract interpretation, mainly that unequivocal, clear, and unambiguous terms are given their ordinary and accepted meaning, must be applied here. In this regard, the Respondent argues that its administrator, Irwin, employed the accepted dictionary definition of minimum and minimum wage to conclude reasonably that the "minimum" wage rates contained article XXI were meant to establish the lowest amount—not the highest or maximum rate that the Company could pay employees in certain years.

The Respondent further contends that the management rights provisions of the agreement permitted it the right to carry out the ordinary and customary functions of management. The Respondent submits that its management, as contractually permitted, decided that it needed to provide a financial incentive to recruit and retain critical employees like the LPNs and CNAs. The Respondent argues that it acted reasonably and within the ambit of its contract authority to manage the Company by here avoiding the loss of employees deemed critical to its operations because of an uncompetitive wage structure.

Finally, the Respondent argues that although it sought to negotiate the wage increases with the Union, this should not be construed as an admission on its part that it could not unilaterally grant it. The Respondent submits it took the view that although permitted unilaterally to implement the wage increase, it was legally (citing Board authorities) obliged to bargain to impasse before actually implementing it and, further, that such a move fosters good labor relations.[12]

The General Counsel argues that the parties' agreement clearly and unambiguously in article XXI sets forth their agreed-upon wage structure and timetable for increases in unit employees' wages. She contends that these dates and amounts are controlling and binding on the parties and submits that the Respondent's granting of wage increases to the LPNs and CNAs in November 2000, without the consent of the Union was violative of Section 8(a)(5) and (1) within the meaning of Section 8(d) of the Act.

I agree with the General Counsel, and my reasons consistent with her argument, my independent analysis, and relevant Board authorities are as follows.

C. Discussion

As noted by the General Counsel, Section 8(d) of the Act provides generally that no party to a collective-bargaining agreement may terminate or modify the agreement without complying with the notice and waiting periods set forth in the section. Section 8(d) expressly states that the duties so imposed shall not be construed as requiring either party to discuss or agree to any modification of the terms and conditions contained in a contract of a fixed term, if such modification is to become effective before such terms and conditions can be reopened under the terms of the contract.

The Board has held that Section 8(d) protects a party to a collective-bargaining agreement from incurring a bargaining obligation on proposals to make mid-term modifications where there is no contractual reopener language irrespective of whether the party is the maker or the recipient of the proposal. *Connecticut Light & Power*, 271 NLRB 766, 767 (1984).

In *Oak Cliff–Golman Baking Co.*, 207 NLRB 1063, 1064 (1973), enfd. mem. 505 F.2d 1302 (5th Cir. 1974), cert. denied 423 U.S. 826 (1975), the Board affirmed the administrative law judge who determined that the employer's unilateral reduction of wage rates for unit employees in derogation of its statutory obligation under Section 8(d) was violative of Section 8(a)(5) and (1) of the Act. In *Oak Cliff–Golman*, it should be noted the employer there unsuccessfully made arguments similar to the Respondent here, namely that economic necessity justified unilateral action; that the modification was a breach of contract and not an unfair labor practice; and that the grievance and arbitration procedure of the agreement should be deferred to in resolving interpretation and application issues associated with the proposed modifications. Of course, these arguments were rejected by the judge and the Board in affirming him.

In the *Wightman Center for Nursing & Rehabilitation*, 301 NLRB 573 (1991), the employer unilaterally increased wages of licensed practical nurses contrary to the terms of the parties' agreement, citing in justification the parties' good-faith bargaining to impasse and the employer's absolute economic necessity to raise wage rates in order to be competitive in hiring and retaining LPNs. The administrative law judge (with approval of the Board) concluded that the employer violated the Act, stating:

> An employer's unilateral change of unit employees wage rates during the term of a collective-bargaining agreement amounts to a repudiation of the agreement which is not merely a breach of contract but "amounts," as a practical matter, to the striking of a death blow to the contract as a whole, and is, thus, in reality, a basic repudiation of the bargaining relationship." *Oak Cliff–Golman Baking Co.*, 207 NLRB 1063, 1064 (1973), enfd. mem. 505 F.2d 1302 (5th Cir. 1974), cert. denied 423 U.S. 826 (1975). During the term of the agreement, it is not *impasse* that is the legal requisite to a change of the wage rates, a mandatory subject of bargaining; rather consent is the requirement. *St. Agnes Medical Center*, 287 NLRB 242 (1987). Furthermore, economic necessity is no excuse or defense to the unlawfulness of the unilateral change. *Standard Fittings Co. v. NLRB*, 845 F.2d 1311 (5th Cir. 1988). Respondent's good-faith bargaining, any "impasse," and the desire to save jobs and its business are all irrelevant. *Oak Cliff–Golman Baking*, supra. Id. at 575.

In my view, *Oak Cliff–Golman Baking* and the *Wightman Center for Nursing & Rehabilitation* offer clear authority to find, as I do, that the Respondent violated the Act by unilaterally increasing the wage rates of its LPNs and CNAs in November 2000. However, I have given consideration to the Respondent's contentions and defenses in spite of what I view as the clear mandate and reach of those decisions.

Turning to the Respondent's contention that the word "minimum" in article XXI gave it authority to increase the LPN and CNA wages in November 2000, I believe this defense or position is without merit. First and foremost, based on its statements and notices to the Union and the unit, the Respondent did not rely on this point before it implemented the in-

[12] The Respondent also argues that the union's failure to challenge the Company's interpretation of art. XXI through the agreement's grievance process indicates that the Union did not truly believe that management was acting without right under the agreement.

creases. Therefore, in agreement with the General Counsel, this position seems to me to be an afterthought, a mere device or construct, devised to cover the Respondent's unlawful conduct.[13]

However, giving the Respondent the benefit of the doubt, as it were, I do not believe the "minimum" agreement withstands substantively legal muster. I note that the "minimum" language does not apply to any current employees, only those employees starting as new employees or who complete probation on March 28, 1999. The term minimum thereafter applies again only to new employees on March 28, 2000, and on March 28, 2001, with respect to their after-probation wages.[14] Thus, the term minimum in the total context of the wage structure in the agreement seems to correspond to the Respondent's position only with respect to new LPNs and CNAs who complete their probation effective March 28, 2000 (and March 28, 2001). The Respondent, of course, argues that the minimum language supports a general wage increase to all CNAs and LPNs which would include *current* and new (*prospective*) CNAs and LPNs based on its stated need to retain and recruit these employees.

Thus, problematically, in its sweep, the Respondent's argument completely ignores, if not nullifies, the contract's expressed limitation on the application of minimums to new employees who complete their probation.

I note also that the Respondent's argument falls short of the mark in one other regard. Even if, arguendo, the "minimum" contract language permitted a wage increase for selected employees, the question then is does it permit the Respondent to grant wage increases at a time other than March 28, 2000, or in addition to March 28, 2000. It is clear that the Respondent, pursuant to the agreement, implemented the March 28, 2000 scheduled increase for CNAs and LPNs in accord with the wage schedule. If the Respondent's position were truly sustainable, then perhaps it would have granted a higher wage on March 28. On the contrary, the Respondent elected to grant what amounts to an additional wage increase to the LPNs and CNAs on November 22. Nowhere, even accepting the Respondent's theory, is the supplemental pay action sanctioned by the agreement. Pay increases were only to be made on the specific contract dates.

These concerns underscore the essence of the problem associated with accepting the Respondent's "cherry picked" approach to its interpretation of the contract. Latching on to the term "minimum" and giving it a self-serving meaning and then thereby granting to itself carte blanche to increase wages of selected employees, the Respondent in effect has rendered the entire contractual wage structure meaningless. In short, in spite of the contract's' clear and unambiguous terms (as I read them), the Respondent has determined that it alone may increase selected employees' wages, in an amount it may determine at any time it chooses. This is an untenable position, and one clearly that would not only undermine the Union but probably, more importantly, the sanctity of the collective-bargaining process.

As to the Respondent's deferral argument, I note that the Respondent did not, in its answer, assert deferral as an affirmative defense, nor did it raise this defense at trial. I would therefore deem this defense waived. *McKenzie Engineering Co.*, 337 NLRB No. 115 (2001). Furthermore, the Respondent denied the grievance filed by the Union on or about December 6, asserting that it was untimely. Accordingly, absent a waiver by the Respondent (not offered or made to date), the matter contractually cannot be deferred to the grievance/arbitration process. Lastly, I do not believe the resolution of the issues here turn on contract interpretation. The terms of the parties' agreement regarding the wage issues, in my view, are clear and unambiguous and therefore the special interpretation skills of an arbitrator would not be helpful. On balance, for these reasons, I would not defer this matter to the agreement's arbitration procedures. *Oak Cliff–Golman Baking*, supra at 617.

Finally, having considered the Respondent's management-rights argument, I would find again no merit to this defense. Irwin, who testified on cross-examination to the application of the management-rights provisions (art. VII) of the agreement to the wage increase issue, did so haltingly and, in all candor, unpersuasively.[15] Observing Irwin somewhat doubtful attempt to connect provisions of the management-rights to the Respondent's decision to implement the wage increases, I concluded there at the hearing that these provisions were not honestly employed by the Respondent to justify the wage increases in question. I observed Irwin seemingly groping for a connection, and the result was unconvincing. In my mind, the management-rights defense was not the basis for the Respondent's action, and, in fact, as Irwin himself admitted these provisions did not specifically address wage increases.

On balance, I am unconvinced that the Respondent timely relied on the management-rights clause provision to justify its unilateral action. Moreover, I agree with the General Counsel that the management-rights provisions of the agreement confer no authority or justification for the wage increases in question.

In sum, I find and conclude that the Respondent violated Section 8(a)(5) and (1) within the meaning of Section 8(d) of the Act by unilaterally increasing the wage of its unit employees, LPNs and CNAs, on November 22, 2000.

CONCLUSIONS OF LAW

1. Grane Health Care, Inc., and Lexington, III, Inc. d/b/a Nittany Manor Care Associates, a Partnership d/b/a Altoona Hospital Center for Nursing Care and Amber Terrace is an employer engaged in commerce within the meaning of Section 2(14) of the Act.

2. Service Employees International Union, Local 585, AFL–CIO, CLC is a labor organization within the meaning of Section 2(5) of the Act.

3. The following employees of the Respondent constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

> All full-time and regular part-time service and maintenance employees and licensed practical nurses, including activity assistants, certified nursing assistants, nursing assistants, cooks,

[13] On this point, the Respondent's administrator, Irwin, testified that between September 10 and November 22, he examined the contract and determined that the art. XXI language permitted the wage increase. However, as attested by the General Counsel's witness, Julie Young, and the Respondent's November 22, 2000 letter (Jt. Exh. 1(D), the agreement was never cited as a justification for the wage increases.

[14] Haer credibly testified that "minimum" was suggested by the Union and agreed to by the Company with regard to after probation rates to allow current employees making a lower precontract rate to catch up to the starting rate for the new employees.

[15] The Respondent's counsel did not address the matter of management rights in his direct examination of Irwin. This was covered by the General Counsel on cross-examination.

> dietary aides, environmental service employees, maintenance employees, housekeeping aides, laundry aides, unit clerks, and unit secretaries, employed by the [Respondent] at its Altoona Hospital Center for Nursing Care and Amber Terrace; excluding all business office clerical employees, confidential employees, receptionists and guards, professional employees and supervisors as defined in the Act.

4. At all material times, the Union has been recognized as the designated exclusive collective-bargaining representative of the employees in the above unit by virtue of Section 9(a) of the Act, for the purposes of collective bargaining with respect to rates of pay, wages, hours of employment, and other terms and conditions of employment.

5. At all material times, the Respondent has embodied such recognition in successive collective-bargaining agreements with the Union, the most recent agreement being effective by its terms for the period March 28, 1999, to March 28, 2001, which agreement establishes, inter alia, the rates of pay for employees in the unit, including licensed practical nurses (LPNs) and certified nurse assistants (CNAs).

6. Commencing on or about November 22, 2000, the Respondent, having unilaterally increased the rates of pay for all LPNs and CNAs without the consent of the Union, having thereby refused to abide by the terms of its collective-bargaining agreement with the Union concerning a mandatory subject of bargaining, has refused to bargain collectively and in good faith with the Union and has thus engaged in unfair labor practices in violation of Section 8(a)(1), (5) and Section 8(d) of the Act.

7. The above unfair labor practices of the Respondent affect commerce within the meaning of Section 2(6) and (7) of the Act.

THE REMEDY

Having found that the Respondent has violated Section 8(a)(5) and (1) of the Act, I shall recommend to the Board that the Respondent cease and desist from continuing in that action and to take certain affirmative action designed to effectuate the policies of the Act. Thus, I shall recommend to the Board that the Respondent be required to revoke the unilateral wage increase to the LPNs if the Union, as the exclusive collective-bargaining representative, so requests. *Mack Trucks*, 294 NLRB 864 (1989).

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended[16]

ORDER

The Respondent, Grane Health Care, Inc., and Lexington, III, Inc. d/b/a Nittany Manor Care Associates, a Partnership d/b/a Altoona Hospital Center for Nursing Care and Amber Terrace, Altoona, Pennsylvania, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Failing or refusing to bargain collectively in good faith with Service Employees International Union, Local 585, AFL–CIO, CLC as the exclusive representative of its employees in the following appropriate bargaining unit by failing to gain consent of the Union to any change during the terms of a collective-bargaining agreement in any mandatory subject of bargaining embodied in the collective-bargaining agreement between the parties affecting unit employees prior to making any change in such mandatory subject:

> All full-time and regular part-time service and maintenance employees and licensed practical nurses, including activity assistants, certified nursing assistants, nursing assistants, cooks, dietary aides, environmental service employees, maintenance employees, housekeeping aides, laundry aides, unit clerks, and unit secretaries, employed by the [Respondent] at its Altoona Hospital Center for Nursing Care and Amber Terrace; excluding all business office clerical employees, confidential employees, receptionists and guards, professional employees and supervisors as defined in the Act.

(b) In any like or related manner interfering with, restraining or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) On request by the Union, rescind the unilateral increases in wage rates to its LPNs and CNAs at its Altoona, Pennsylvania facility.

(b) Within 14 days after service by the Region, post at its facility in Altoona, Pennsylvania, copies of the attached notice marked "Appendix."[17] Copies of the notice, on forms provided by the Regional Director for Region 6, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(c) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C. January 14, 2002

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
National Labor Relations Board
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT refuse to bargain collectively in good faith with Service Employees International Union, Local 585, AFL–CIO, CLC by unilaterally granting wage increases to any unit employees during the term of any collective-bargaining agreement

[16] If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

[17] If this Order is enforced by a judgment of a United States Court of Appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

unit between the Union and the Altoona Hospital Center without the consent of the Union.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce employees in the exercise of the rights guaranteed them by Section 7 of the Act.